



U.S. Department of Justice

United States Attorney
Southern District of New York

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 21, 2022

BY ECF AND EMAIL

The Honorable Richard M. Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: United States v. Robert Hadden,
S2 20 Cr. 468 (RMB)**

Dear Judge Berman:

The Government respectfully submits this letter, with the consent of the defense, both in response to the Court's Order of December 20, 2022 (Dkt. 201) (the "Order"), and to outline motions before the Court that have been mooted by agreement of the parties.

First, in response to the Order, the Government submits under seal as Exhibit A the names of individuals that correspond with each Victim and Witness identified by number in the pretrial submissions. (Ex. A).¹

Second, the Government writes pursuant to the Order to advise the Court of the current total number of witnesses it seeks to call to testify about the defendant's "other bad acts"—that is, the defendant's other sexual abuse and assault of patients—under Rules 413 and 404(b). As discussed at the Pretrial Conference, as part of the Government's ongoing efforts to streamline its case in order to most clearly and efficiently present it to the jury, and as informed by the Court's remarks at the pretrial conference of December 14, 2022 (the "Pretrial Conference"), the Government has significantly narrowed the number of such witnesses it seeks to call. The Government previously moved to offer evidence of the defendant's other sexual assaults and abuse through 18 victim witnesses, two nurse witnesses, certain outcry witnesses, and custodians. The Government presently intends to call 9 victim witnesses, two nurse witnesses,² and three outcry

¹ In order to provide a complete response to the Court's Order, this list includes the names of individuals that were "identified by number in the pretrial submissions" (Dkt. 201), but that, as detailed below, the Government no longer seeks to call to testify at trial.

² Specifically, at this time, the individuals the Government no longer plans to present evidence on under Rule 404(b) and Rule 413 include Victim-8, Victim-14, Victim-17, Victim-20, Victim-21, Victim-23, Victim-24, and Victim-28.

witnesses to offer evidence of the defendant's other sexual assaults and abuse under Rules 413 and 404(b).³

Third, in response to the Order, the Government confirms that the list of names and locations provided to the Court on or about December 16, 2022, and as updated on or about December 20, 2022, for *voir dire* purposes included names and locations for the Government and for the defendant.

Fourth, as part of the Government's ongoing efforts to streamline its case in order to most clearly and efficiently present it to the jury, and in light of the Court's guidance at the Pretrial Conference, the Government no longer plans to present evidence regarding Victim-3 or Victim-5 or submit Counts Four and Six of the S2 Indictment to the jury. The defendant's motions *in limine* with respect to Victim-3 and Victim-3's statements to her friend ("Witness-5") are thus moot. (See Dkt. 193 at 3-4; Dkt. 196 at 4-5).

As is common in preparation for trials in this District, and as the Government informed the Court at the Pretrial Conference and in its motions *in limine* (Dkt. 173 at 27 & n.10), the Government's ongoing trial preparation may further narrow the number of witnesses the Government intends to call, or may result in the identification of additional witnesses.

Finally, as discussed at the pretrial conference on December 14, 2022 (the "Pretrial Conference"):

1. The defendant's motion to strike surplusage from the S2 Indictment is moot. The Government has agreed that it will provide a redacted version of the S2 Indictment to the Court for the jury.
2. The Government's motion to preclude the defense from making arguments or offering evidence about the Government's motives in investigating and prosecuting the defendant is moot. The defendant has agreed not to make such arguments or offer such evidence.
3. The Government's motion requesting adequate expert notice from the defense for the proposed expert opinions of Dr. Robert Berg is moot. The defense has provided

³ The Government also intends to call two records custodians who would authenticate the defendant's 2016 state guilty plea transcript and records of a 911 call made on or about June 29, 2012, the authenticity of which the defendant has not at this time agreed to stipulate to.

supplemental disclosures that the Government agrees are adequate as to the opinions disclosed therein.⁴

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

by: s/ _____
Jane Kim
Paul M. Monteleoni
Lara Pomerantz
Assistant United States Attorneys
(212) 637-2038 / 2219 / 2343

cc: Defense Counsel (By Email and ECF)

⁴ The defense has not provided notice as to opinions Dr. Berg may have about specific victims' medical records, and the Government reserves the right to object should the defense attempt to offer any such opinion.

Request to Be Filed Under Seal**Exhibit A:****Names of Each Victim and Witness Identified in the Pretrial Submissions**

Victim/Witness Identifier from Pretrial Submissions	Name of Victim/Witness
Minor Victim-1	
Victim-1	
Victim-2	
Victim-3	
Victim-4	
Victim-5	
Victim-6	
Victim-7	
Minor Victim-3	
Victim-8	
Victim-9	
Victim-10	
Victim-11	
Victim-12	
Victim-14	
Victim-15	
Victim-16	
Victim-17	
Victim-18	
Victim-19	
Victim-20	
Victim-21	
Victim-23	
Victim-24	
Victim-27	
Victim-28	
Victim-29	
Victim-30	
Witness-1	
Witness-2	
Witness-3	
Witness-4	
Witness-5	